



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Wayne Lafcure  
County Auditor  
Clay County  
Henrietta, Texas

Dear Sir:

Opinion No. 0-5595  
Re: Can the Commissioners' Court of Clay County legally transfer the money not needed in the courthouse and jail fund to the respective commissioners' precinct and the general fund of the county under the provisions of Article 1630, V. A. C. 3.

Your letter of September 4, 1943, requesting the opinion of this department on the above stated question reads in part as follows:

"There has been in Clay County a tax rate of .15 for the Courthouse and Jail Fund, this tax was not needed and was lowered to a rate of .3. From the first tax rate the Commissioners' Precincts and the General Fund have borrowed moneys. And at this time there is no need for the moneys on hand in the Courthouse and Jail Fund and we respectfully request that you make a ruling which will govern Article 1630 V.A.C.S. in other words may the commissioners' court by proper order of the court transfer the moneys not needed in the Courthouse and Jail Fund to the respective commissioners precincts and the general fund, thereby cancelling the outstanding warrants which were issued when the respective precincts and general fund borrowed the above mentioned money from the Courthouse and Jail Fund."

Article 1630, Vernon's Annotated Civil Statutes provides:

Honorable Wayne Lefeuré page 2

"The Commissioners' Court by an order to that effect may transfer the money in hand from one fund to another, as it may deem necessary and proper, except that the funds which belong to the class first shall never be diverted from the payment of the claims registered in class first, unless there is an excess of such funds."

It is stated in Texas Jurisprudence Vol. 11, page 609:

"The Constitution prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries, and for permanent improvements, respectively. The moneys arising from taxes levied and collected for each of the enumerated purposes are constitutional funds; and the commissioners' court has no power to transfer money from one fund to another, or to expend, for one purpose, tax money raised ostensibly for another purpose.

"The immediate purpose of the provision is to limit the amount of taxes that may be raised for these several purposes, respectively; but it is also designed to inhibit the excessive expenditures for any such purpose, and to require that any and all moneys raised by taxation for any purpose shall be applied to that particular purpose and to no other."

The Courthouse and Jail fund is the permanent improvement fund, or at least, constitutes a portion thereof, which is a constitutional fund.

Article 1630, V. A. C. S. does not authorize the Commissioners' Court to transfer money from one constitutional fund to another constitutional fund or any other fund.

We quote from Texas Jurisprudence Vol. 11, Page 611 as follows:

"No implied power to transfer money from one to another constitutional fund is derived from the fact that the original fund contains more than enough to meet the current demand against it. Such excess may be retained in that fund applied in succeeding years to the purpose for which it was raised, thereby possibly reducing the future tax rate for that purpose.

Honorable Wayne Lefebvre page 3

"It seems to have been assumed in some cases that the transfer of money from one fund to another is invalid only in the event, of and to the extent, that the latter fund is increased beyond the Constitutional limit. But it is now settled that the circumstances that any particular levy of taxes for a specific fund was made at a rate less than the maximum rate permitted by the Constitution does not affect the situation. The maximum amount which may be expended for each class of purposes is determined by the amount actually and specifically raised therefor, not by the amount which legally might have been levied and raised. This does not, however, prevent the proper expenditure, for such purpose, of any unexpended balance in the corresponding fund brought over from previous years.

"Where the evidence shows that the Commissioners' Court has from time to time transferred moneys from one constitutional fund to another, and that a reasonable apprehension that the practice will continue exists, an injunction is properly granted. And a collection of a tax may be enjoined where the levy has been made with the intention of transferring the money to a different fund than that for which it has been levied. . . ." (Also see the cases of Carroll vs. Williams 252 S. W. 504; Commissioners' Court of Henderson County vs. Burke 262 S. W. 94 ).

In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that the Commissioners' Court of Clay County has no legal authority to transfer money from the permanent improvement fund of the county to the respective commissioners' precincts or the general fund of the county.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED 11, 1943

*Gerald C. Mann*  
 By *Ardell Williams*

ATTORNEY GENERAL

Ardell Williams  
Assistant

AW:ncd

